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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	)	
	)	Civil Action No.
Plaintiff,	)	
	)	**COMPLAINT**
v.	)	
	)	
TOWNSHIP OF BERNARDS, NEW JERSEY and BERNARDS TOWNSHIP PLANNING BOARD,	)	
	)	
Defendants.	)	

The United States of America, by its undersigned attorneys, files this Complaint and alleges:

Introduction

1. The United States of America brings this civil action against the Township of Bernards, New Jersey and the Bernards Township Planning Board, for violations of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc–2000cc-5, based on the Defendants' denial of approval for the construction of a mosque, proposed by the Islamic Society of Basking Ridge ("ISBR"), on a property where places of worship are a permitted use.

2. Defendants' denial of approval for the ISBR's mosque violated RLUIPA because Defendants: 1) discriminated against the ISBR based on its religion and the religion of its members; 2) applied standards and procedures on the ISBR that it had not applied to other religious and nonreligious assemblies in the past; and 3) imposed a substantial burden on the ISBR and its members' religious exercise because they cannot fully practice their faith without a mosque.

3. Defendant also violated RLUIPA through amending its zoning ordinance in a manner that has imposed unreasonable limits on the ISBR and all other places of worship to locate within the Township of Bernards.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2(f).

5. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the District of New Jersey.

Parties

6. Defendant Township of Bernards ("Township") is a municipality in Somerset County, New Jersey.

7. The Township is governed by and acts through a Township Committee of five members who are the legislative and executive body of the municipality. These members are elected for three-year terms. The Township Committee annually elects a mayor from among its members.

8. The Township has the authority to regulate and restrict the use of land and structures within its borders.

9. The Bernards Township Planning Board ("Planning Board") is an agency of the Township. Its eleven members consist of the mayor (or the mayor's designee), another member of the Township Committee, and nine citizens appointed by the mayor. The Planning Board has the authority to approve site plan applications.

10. For purposes of RLUIPA, the Township and the Planning Board each constitute a "government." 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

11. The Township is responsible for the acts and omissions of its agents and agencies, including the Planning Board.

Facts

The Islamic Society of Basking Ridge

12. The Islamic Society of Basking Ridge is a non-profit, Muslim organization incorporated and existing under the laws of the State of New Jersey. The ISBR is a "religious assembly or institution," as defined by RLUIPA. 42 U.S.C. § 2000cc(2)(b)(1).

13. According to their Islamic faith, members of the ISBR believe that prayer should be conducted five times daily in a mosque and should be led by an imam, a religious leader. Their faith places a particular focus on the Friday afternoon prayer service, which includes a

sermon. Members of the ISBR believe that it is important to conduct prayers together as a congregation. Congregants are required to perform a ritual washing of hands and feet before prayers, called *wudu*.

14. According to their Islamic faith, members of the ISBR have religious obligations beyond prayer and worship. Members of the congregation are required to give *zakat*, a donation made annually to be used for charitable purposes. Members are also required to teach their children about the Islamic faith.

15. According to their Islamic faith, members of the ISBR believe that a mosque must be a deeded property dedicated to God, and that it must include a prayer area that is oriented towards Mecca; is specifically consecrated according to religious tenets; and allows congregants to adhere to Islamic religious practices. A mosque also has religiously significant architectural elements, such as a minaret.

16. The ISBR does not have a mosque, nor is there any other mosque in the Township. The closest mosque is approximately twenty-five minutes away by car, which is too far for many members of the ISBR to drive for daily prayers.

17. Without a mosque, the ISBR conducts its Friday afternoon worship in a community center located at 289 S. Maple Avenue in Basking Ridge, which it rents for this purpose.

18. According to the ISBR's beliefs, the community center is not a mosque. It is not a deeded property dedicated to God; it is not oriented towards Mecca; it is not consecrated; and it lacks religiously significant elements of a mosque, such as a minaret. Because the community center is not a mosque, the ISBR is also unable to attract an imam and is hindered in carrying out other religious activities.

19. In addition to not meeting the requirements for a mosque, the community center is inadequate for various important religious practices. For example, the layout of the community

center prevents all congregants from viewing the worship leader during prayer services; it lacks facilities for performing *wudu;* and it lacks space for holding half-day Sunday school for children. Additionally, the community center is not available for daily prayers or for special events such as Ramadan services. Also, for two months per year, the community center is not available at all, requiring the congregation to worship outdoors in a public park.

The Subject Property on Church Street

20. Because the ISBR cannot fully and adequately practice its religion under these circumstances, it began a search for a location to build a mosque within the Township.

21. In 2010, the ISBR identified a property for sale at 124 Church Street (the "Church Street property") in an R-2 residential zoning district on a lot size of 4.088 acres. The property was particularly desirable to the ISBR because, at the time, the R-2 district allowed places of worship as a permitted use on properties of three acres or more.

22. The Church Street property contains a single-family home and a detached structure. It is surrounded by a variety of uses. A fire station is located across the street; there are single-family homes to the east and west; and within a half-mile, there is a church, an elementary school, a large public park, an auto body shop, and a gas station.

23. On November 9, 2011, the ISBR purchased the Church Street property.

24. Before closing on the property, representatives of the ISBR contacted the Township's planner. The Township's planner informed the ISBR that the proposal to build a mosque was a conforming use and that he did not foresee any issues with the development of a mosque on the property.

The ISBR's Site Plan Application

25. On April 20, 2012, in accordance with the Township of Bernards Code, the ISBR sought site plan approval from the Planning Board to build its mosque on the Church Street property.

26. The ISBR's site plan for the Church Street property included a 4,252 square-foot mosque with a prayer hall, a *wudu* room, a kitchen, and an administrative office. The plan included 50 parking spaces, two detention basins to handle storm-water runoff, a circular driveway, and landscaping around the property. The design accommodated a maximum occupancy of 150 people and met the religious needs of the congregation. The plan also met the parking, storm water control, bulk, area, setback, landscaping, and other similar requirements of the Township code.

27. The exterior appearance of the proposed mosque was designed to fit into the neighborhood. The ISBR's architect omitted a traditional dome from his mosque design and opted for discrete minarets in a form that mimics residential chimneys. The architect also designed a lower roof line on the side of the building facing the street in order to minimize its visual impact.

28. The ISBR had a reasonable expectation that the Planning Board would approve its plan just as the Planning Board had approved previous applications for houses of worship and nonreligious places of assembly that similarly met the requirements of the zoning code.

29. The mosque proposal met with vociferous public opposition. Flyers, social media, and websites denounced the mosque and were filled with anti-Muslim bigotry and references to terrorism and the 9/11 attacks. On two occasions, the ISBR's mailbox was vandalized. In one such instance the letters on the mailbox were changed from "ISBR" to "ISIS."

30. At the first hearing, held on August 7, 2012, members of the public opposed to the ISBR's application raised concerns that were unrelated to the land use and zoning matters at issue, reflecting bias against the ISBR for its religious beliefs.

31. At the first hearing, Planning Board members asked questions outside the scope of the land use and zoning matters at issue, such as where members of the ISBR lived and worked.

32. The Planning Board ultimately held thirty-nine public hearings over three and a half years. The Planning Board had never held such a large number of hearings for any previous site plan application.

33. On December 8, 2015, three-and-a-half years after the ISBR submitted its application, the Planning Board denied the ISBR site plan approval. Since at least 1994, this was the first time that the Planning Board had denied a site plan application for a house of worship.

34. The Planning Board adopted procedures that contributed to this unprecedented lengthy application process. For instance, at numerous hearings, members of the public signed in if they wished to speak, but the Planning Board ended those meetings before everyone on the list had spoken and invited those who had not spoken to speak at the next meeting. Although the ISBR requested that either the hearing should continue until everyone had spoken, or that only those on the list who had not spoken should speak at the continued hearing, the Planning Board allowed anyone coming to the next hearing to sign the speaker list. By this method, mosque opponents in the community were able to keep the hearings from ending and prolong the delay and expense to the ISBR. The Planning Board also declined to impose time limits on speakers even though it had the authority to do so, and did so with other applications.

35. In denying the ISBR's application, the Planning Board applied different substantive requirements than it had in evaluating previous applications. While the zoning code required 50 parking spaces for houses of worship based on the 3:1 standard parking ratio, a traffic engineer hired by a group of mosque opponents recommended 107 spaces. The Planning Board adopted this as a requirement that the ISBR had to meet.

36. Requiring extra parking spaces necessarily led to greater impervious surface on the site and forced the ISBR to move a detention basis—a grassy depression used to collect storm water—into the buffer area toward the edge of its property. The Planning Board used the presence of the detention basin in the buffer as a ground to deny the site plan. In a previous application by a church, however, the Planning Board permitted a detention basin in a buffer.

37. Although the ISBR submitted a detailed landscaping plan showing a solid screen of evergreen trees on the southern and northern border of the property and the ISBR's engineer submitted evidence of tests showing adequate screening to block vehicle headlights coming from the property, the Planning Board cited inadequate screening as a ground for denial. In contrast, when screening was identified as an issue for other religious institutions' applications, the Planning Board either gave the applicant an opportunity to revise the screening plan with explicit instructions on what was needed or delegated review of the issue to a Township Committee or professional.

38. The ISBR's engineer worked closely with the Planning Board's engineer over a period of years to design a storm-water management system and submitted a 226-page storm-water management plan. After the ISBR's engineer addressed concerns raised by a neighbor of the mosque and by an engineer hired by mosque opponents, the Planning Board's engineer sent a letter to the Planning Board stating that the system was satisfactory. Nonetheless, in denying the ISBR's application, the Planning Board cited storm-water management as a reason for denial, asserting that the ISBR should have submitted a full new report.

39. While the ISBR's site plan complied with the Township ordinance regarding the size of fire lanes in its driveway and parking lot, the Planning Board determined that the ISBR should have followed a more stringent National Fire Protection Association ("NFPA") standard that a mosque objector had identified. This was the first time that the Planning Board had ever applied this NFPA standard to a house of worship, a school, or any site plan applicant. Indeed,

for at least one school and one synagogue, fire lane standards were not considered at the site plan stage; rather the applicants were asked to work with fire officials at the construction stage.

40. The Planning Board also denied the site plan application because it found that the ISBR had not proven that the parking lot's traffic circulation ensured the safety of pedestrians, and, in particular, children attending Sunday school. The ISBR had, however, submitted a written plan including the use of a monitor wearing a vest, something that had been found adequate by the Planning Board for a house of worship previously.

41. The Planning Board denied the ISBR's application outright instead of following its normal procedure of approving an application with conditions and delegating certain matters to its own professionals or requiring an applicant to submit revised plans.

42. The reasons set forth by the Planning Board for denying the site plan application were pretextual, and the Planning Board in fact denied the application based on discrimination toward Muslims. The Planning Board's denial of the ISBR's application was influenced by members of the public, who had expressed bias against the ISBR because of its religious beliefs.

43. The Township and the Planning Board treated the ISBR's application less favorably than site plan applications for religious and non-religious assemblies whose applications were approved.

44. The denial of the ISBR's application has imposed, and continues to impose, a substantial burden on its members' exercise of their religion. They continue to operate without a mosque, are unable to hold daily prayers, run a Sunday school, hold special events, attract an imam, or engage in other important religious activities, and remain reliant on the community center and the park for Friday prayers.

45. The construction and operation of a mosque on the Church Street property would affect interstate commerce in many ways, including by the transfer of funds, the purchase of materials and services, and the use of interstate highways.

Township's Amendment of Standards for Houses of Worship

46. On October 15, 2013, almost 10 months after the ISBR submitted its application, the Township enacted Ordinance # 2242. This ordinance amended the classification of a house of worship from a permitted use in residential zoning districts to a conditional use. Under this ordinance, a house of worship must now meet a minimum lot area of six acres with primary access achieved from a state or county road in addition to other more stringent setback, bulk, and dimensional requirements. Township of Bernards Code § 21-12.3.

47. When the Township enacted Ordinance #2242, there were at least eleven houses of worship in residential zoning districts that had been built and approved by the Township's land use authorities. Eight of the eleven houses of worship were and still remain on lots that are less than the six-acre minimum required by Ordinance #2242.

48. Since the Township enacted Ordinance #2242, there has been scant land available that satisfies the criteria in the ordinance.

49. Ordinance # 2242 unreasonably limits the ISBR and all other religious assemblies, institutions, and structures from locating within the Township.

COUNT I

RLUIPA – Substantial Burden

50. The allegations above are incorporated by reference.

51. Defendants' treatment and denial of the ISBR has imposed a substantial burden on the ISBR's religious exercise in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

COUNT II

RLUIPA – Equal Terms

52. The allegations above are incorporated by reference.

53. Defendants' treatment of the ISBR and its site plan application constitutes the imposition or implementation of a land use regulation that treated, and continues to treat, the ISBR on less than equal terms with nonreligious assemblies or institutions in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

COUNT III

RLUIPA - Discrimination

54. The allegations above are incorporated by reference.

55. Defendants treated the ISBR and its site plan application differently from other applications on the basis of religion or religious denomination in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

COUNT IV

RLUIPA – Unreasonable Limitations

56. The allegations above are incorporated by reference.

57. Defendant Township's enactment of Ordinance #2242 has placed unreasonable limitations on religious assemblies, institutions, and structures, including the ISBR, locating within the Township, in violation of RLUIPA 42 U.S.C. § 2000cc(b)(3).

WHEREFORE, the United States seeks that this Court enter an order that:

1. Declares that the Defendants' actions violate RLUIPA;
2. Enjoins the Defendants, their officers, employees, agents, successors and all other persons in concert or participation with them, from—

   a. Imposing a substantial burden on the religious exercise of the ISBR and its members;

   b. Treating the ISBR and its members on less than equal terms with nonreligious assemblies or institutions;

c. Discriminating against the ISBR and its members on the basis of religion or religious denomination;

3. Enjoins the Defendant Township from enforcing Ordinance #2242 and from imposing or implementing any ordinance that unreasonably limits religious assemblies, institutions, or structures in the Township including those of the ISBR and its members;

4. Requires the Defendants, their officers, employees, agents, successors, and all other persons in concert or participation with them, to:

a. Take actions necessary to restore, as nearly as practicable, the ISBR and its members to the position they would have been in but for the Defendants' unlawful conduct, including but not limited to granting the necessary approvals for the ISBR to use the Church Street property as a place of worship; and,

b. Take actions necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to providing RLUIPA training to their personnel, establishing procedures to address complaints of RLUIPA violations, and maintaining records and submitting reports relating to RLUIPA compliance; and

5. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

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